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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 CHART SEQUAL TECHNOLOGIES, INC. ) Civil No. 10-2655 DMS (NLS)  
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12 Plaintiff, )  
13 v. ) ORDER DENYING EX PARTE  
14 MICHAEL STERN and DIGIFLO, INC. ) APPLICATION TO SCHEDULE EARLY  
15 ) NEUTRAL EVALUATION  
16 ) [Docket No. 12.]  
17 Defendants. )  
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16 On February 24, 2011, Plaintiff filed an ex parte application for an Early Neutral Evaluation  
17 ("ENE") in this patent case. [Docket No. 12.] On February 28, 2011, Defendants timely filed an  
18 Opposition to the Ex Parte Application [Docket No. 13.] and Plaintiff filed a Reply in support of the Ex  
19 Parte Application. [Docket No. 14.] Plaintiff believes that an ENE at this time would be an efficient  
20 use of the resources of the court and the parties. Defendants object to the burden of having to travel  
21 from Washington to appear at an ENE in San Diego before resolution of their pending Motion to  
22 Dismiss. Defendants argue in the Motion to Dismiss: 1) this court lacks personal jurisdiction; 2) this  
23 case should be transferred to the Western District of Washington; and 3) this case should be dismissed  
24 for failure to state a claim. [Docket No. 11.] In Reply, Plaintiff argues that travel to the Southern  
25 District of California is not unduly burdensome, and in fact could be cheaper than filing a Reply brief  
26 and appearing in this District for the hearing on the Motion to Dismiss.

27 The Local Rules provide that an ENE shall be held within 45 days of the filing of an Answer .  
28 The Local Rules also provide for an ENE prior to the filing of an Answer:

1 At any time after the filing of a complaint and before an answer has been filed, counsel  
2 for any party may make a request in writing to the judicial officer assigned to supervise  
3 discovery in the case to hold an early neutral evaluation conference, discovery  
4 conference or status/case management conference. Copies of the request must be sent to  
5 counsel for the parties and the parties whose addresses are known to the requesting  
6 counsel. Upon receiving such request, the judicial officer will examine the circumstances  
7 of the case and the reasons for the request and determine whether any such conference  
8 would assist in the reduction of expense and delay the case. The judicial officer will hold  
9 such conferences as he or she deems appropriate.


10 Civ. L.R. 16.1(c)(1).

11 In light of Defendants' objections to personal jurisdiction, and to travel at this time, the  
12 circumstances of this case do not warrant the scheduling of an ENE at this time.

13 Accordingly, It Is Hereby Ordered that:

- 14 1. The Ex Parte Application to Schedule an Early Neutral Evaluation is Denied  
15 without prejudice; and
- 16 2. If the case proceeds in this district and an Answer is filed, an ENE will be  
17 scheduled in accordance with the Local Rules of the Southern District of  
18 California.

19 DATED: March 1, 2011

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22 Hon. Nita L. Stormes  
23 U.S. Magistrate Judge  
24 United States District Court  
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